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Analysis of ways to enhance the contribution of specific services sectors to the development perspectives of developing countries: National experiences with regulations and liberalization: Examples in the construction services sector and its contribution to the development of developing countries

Note by the UNCTAD secretariat

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I. Background

1. *The mandate.* The Expert Meeting on National Experiences with Regulation and Liberalization: Examples in the Construction Services Sector and Its Contribution to the Development of Developing Countries was convened upon the decision of member States taken at the consultations of the President of the Trade and Development Board on 31 March 2000 in accordance with paragraph 134 of UNCTAD X's Plan of Action as contained in document TD/386, which states that: "UNCTAD should help developing countries in identifying: the priority sectors where early trade liberalization should take place; the main trade barriers that developing countries face in those service sectors, especially those which limit developing country ability to export their services; the preconditions, at the domestic level, which are necessary for developing countries to benefit from trade liberalization in the service sector in general. Attention should be paid to the opportunities offered to developing countries by opening the economic environment. This analysis should be supported, where necessary, by technical assistance to strengthen their domestic service capacity, and in particular thorough support in the area of policy and legislative adjustments." The decision was confirmed by the Trade and Development Board at its twenty-fourth executive session on 12 May 2000. The Expert Meeting was held at the Palais des Nations, Geneva, from 23 to 25 October 2000.

2. *The main issues arising from the experts' discussions.* The experts from national capital demonstrated an exceptional degree of enthusiasm, indicating that they had never had such an opportunity to express their views and concerns in an international forum. The discussions took place at two levels, involving on the one hand General Agreement on Trade in Services (GATS) negotiators and on the other hand experts from national capitals. The discussions among the GATS negotiators showed the difference of views with respect to the *negotiating approach* in the construction services sector, where some favoured the use of the so-called cluster approach while others opposed it. The discussions among the experts from capitals demonstrated no opposing views, but differences in emphasis. The main issue of concern to them was *to obtain a greater share of their domestic market* for construction, particularly for projects financed by the World Bank and other donors. This concern was closely related to having a greater *access to technology and financing*. The *participation of private business associations* could play a multiplier role in developing countries by raising awareness about the World Trade Organization (WTO) processes and inviting a higher level of involvement of different constituencies in formulating national policies and positions in the trade negotiations.

3. The main issues raised, including future work at the international level, are discussed below. There are a number of key issues and policy options arising from the Expert Meeting for consideration by the Commission.

II. Areas for further action: Policy proposals based on the Expert discussions

(a) Policy environment favourable to development of the construction services sector at the national level

4. Experts from developing countries emphasized that their primary concern was how to improve the competitiveness of their own firms so that they could compete successfully in the multilaterally and bilaterally financed construction projects in their countries. Much of the

debate focused on the need for better policies for capacity-building. In this respect:

(a) A national policy framework should be created to promote utilization and building of domestic capacities.

(b) The necessary elements of a policy mix would address optimal instruments of industrial policy, human resource development and macroeconomic policies, including fiscal policies which avoid onerous internal taxation of construction firms and high tariffs on essential equipment.

(c) Removing unnecessary bureaucratic obstacles internally may bring benefits already in the short run.

(d) In the longer term, however, success in building competitiveness will depend on adequate funding for research and development.

(e) The right policy mix can be achieved only if dialogue is maintained between all stakeholders in the private and public sectors of the economy.

5. Experts stressed that local companies need to follow a "learn by doing" approach. Once they have accumulated expertise and strengthened their competitiveness, these may be translated into export capacity. *The best policies and legislation* aimed at upgrading the capacity of the construction services sector should include provisions to encourage the transfer of technology to domestic firms through joint ventures and other forms of partnership with foreign firms.

6. The building of construction services' export capacity may be strengthened if transparency is maintained in the export markets of *developed countries* and effective recourse against anti-competitive practices is ensured.

7. Experts noted that developing countries will succeed in boosting the performance of their construction services firms to the extent they make progress in human resource development. This development should be targeted at:

(a) The training of highly skilled professionals, as well as other workers, in order to fulfil the requirements of the sector;

(b) Developing skills related to the use of information technology;

(c) Developing project management and design skills and capacities, which can provide a lead into foreign markets.

8. Experts indicated that the driving force in the implementation of these objectives and in capacity building is national Governments, supported by UNCTAD and other related international and regional institutions and organizations.

(b) Issues for the positive agenda of developing countries in multilateral trade negotiations

9. Experts stressed that the framework for developing countries to acquire knowledge and transfer of technology as a way of developing domestic capacities in the construction services sector should be established in line with the provision of GATS Article IV. In this light:

(a) Negotiations on the GATS rules in the area of government procurement should address the specific aspect of multilateral funding and tied aid in the provision of construction services as the means of implementing GATS Article IV.

(b) A difference of views emerged with respect to the use of the cluster approach which could be included as an Annex on Construction Services aimed at addressing the specific problems that developing countries face in the construction services sector and at ensuring the application of GATS Article IV.

(c) Additional commitments by the leading exporters of construction services may be considered with respect to the implementation of GATS Article IV provisions in the construction services sector. These could include commitments with respect to restrictions on the temporary movement of personnel, discriminatory and non-transparent licensing and standards and anti-competitive practices, non-recognition of professional qualifications, problems of access to networks for the supply of construction services, discriminatory government procurement practices against developing countries' construction services providers, subsidies, tied aid and discriminatory tax policies.

10. The experts emphasized that any commitment or rules that developing countries accept should permit the *policy flexibility* needed to maintain local content requirement related to services, as well as requirements of associations and joint ventures, so as to include local companies in the design and implementation of construction projects.

11. The experts suggested that the multilaterally agreed criteria for the *practice of architects* could be based on the minimum requirement for the qualification of architects and engineers adopted by the International Union of Architects. This may serve to promote work in the WTO in the area of mutual recognition of qualifications and to facilitate the recognition of diplomas and curricula.

12. There was a consensus among the experts that preferential treatment within the framework of *subregional agreements* among developing countries could provide opportunities for developing country construction services firms, including through harmonized legislation. Therefore, trade among developing countries should be promoted in the construction services sector, including trade in related equipment and materials and the movement of qualified personnel.

13. Experts indicated that progressive liberalization should start in those areas of construction services that may contribute to achieving social objectives, for example the construction of housing.

(c) Collaboration of UNCTAD with the multilateral financial institutions

14. Experts suggested that UNCTAD should work to ensure that multilateral financial institutions and donor countries support domestic policies aimed at developing national capacities in construction services. This could be achieved:

(a) Directly through targeted programmes, e.g. on capacity-building;

(b) Indirectly through implementation of multilateral development assistance which has construction projects as a component, e.g. in the building of infrastructure.

15. Experts indicated that *margin of preference* in international tendering allocated to local firms should be sufficient to allow their effective participation, and that criteria established for participation in multilaterally financed projects should not be so stringent as to exclude domestic construction firms in developing countries. Otherwise, this might detract from the limited domestic opportunities available to developing country firms to build their capacities.

16. Experts also highlighted the need for multilateral financial institutions to ensure the *harmonization of rules for procurement* in order to enhance transparency and fairness in bidding procedures.

(d) Possible future activities for UNCTAD

17. Experts noted that no other international organization has so far addressed the issue of trade in construction services in a comprehensive manner with emphasis on the development dimension. In this respect, UNCTAD should take the lead in promoting and establishing *linkages among all the stakeholders* in the international market for construction services. This required a continuing dialogue between the relevant professional associations, multilateral financial institutions and bilateral and regional funding agencies and development agencies from developed countries. The dialogue should focus on how to address development and trade issues in tandem so as to ensure greater participation by developing country firms in their domestic and international markets.

18. To meet the needs identified by experts and in order to *build awareness about construction services related trade issues* among the broader audience in developing countries, UNCTAD should use its existing technical assistance projects, for example the Commercial Diplomacy Programme.

19. Work sought by experts from UNCTAD in the area of legislative adjustments in the construction services sector is important both for supporting the development and efficient functioning of the domestic construction services sector and for achieving progress in multilateral trade negotiations. To address the first objective, a *model law* to promote the development of an efficient and competitive construction services sector might be needed. UNCTAD should work with the United Nations Commission on International Trade Law (UNCITRAL) to assess the feasibility of drafting such a law. With regard to the other objective, UNCTAD should continue its work on the Measures Affecting Service Trade (MAST) information database and aim to include therein legislation and regulations affecting trade in construction services.

20. Experts felt that there was a need to organize a *follow-up ad hoc meeting* to further discussions in the area of construction services. In collaboration with other international and regional organizations and with bodies in the field of construction services such a meeting could aim at preparing a "deliverable" to the international community as to how to implement the issues outlined above, including within the framework of the current GATS negotiations.